CHOOSING AN ENTITY

*This program and its lecture constitute educational information only and do not constitute legal or accounting advice
WHO ARE YOU?  
WHAT DO YOU WANT TO DO?

Here are some ISSUES TO CONSIDER by completing the following sentences:

• I want to go into business with...

• I’d like to seek financing from....

• The roles I would like to have on the farm during the coming years are...

• This is how I see my life (as well as that of my partner and other family members) – on and off the farm – in 5, 10, 15, 20 years...

• I would like my farm legacy to be...
DON'T LET THE ENTITY "TAIL" WAG THE DOG
Business Options

Different business types:

- Sole Proprietorship
- S Corporation
- C Corporation
- B Corporation
- Limited Liability Company (LLC)
- Partnership (General or Limited)
- Limited Liability Partnership (LLP)
- Non-profit Corporation
- Cooperative

MA Farms by Legal Status

- Sole Proprietorships, 80%
- Corporations, 9%
- Partnerships, 7%
- Other, 4%
Sole Proprietorships

- A sole proprietorship is a person engaged in business for themself.

- It is an unincorporated business owned and run by one individual with no distinction between the business and the owner.

- The owner is entitled to all profits and responsible for all liabilities.

- Does not require legal filings, except on the municipal level. If you use a business name other than your own, you must file a Doing Business As (DBA) certificate with the local municipality.
Corporations – S Corps. and C Corps.

- A corporation is an independent legal entity owned by shareholders.
- A “C corporation” is separately taxed on its taxable income.
- An “S Corporation” passes through its income, losses, etc. to its stockholders, who report their pro rata shares of the S corporation’s tax items on their personal tax returns and pay any resulting tax.
- Stockholders of a corporations enjoy limited liability and, with certain exceptions, are not liable for corporate obligations exceeding their investment.
Corporations – B Corps.

• Benefit corporations, or B-corporations, pursue general or specific public benefits AND can distribute profits to shareholders.

• Unlike S and C-corporations, B-corporations are not required to focus solely on maximizing profits.

• The new kid on the block. Corporations were able to elect benefit corporation status in December 2012.

• Additional filings and fees required.
Partnerships (General or Limited) and Limited Liability Partnerships (LLPs)

- **A General Partnership** is an association of two or more persons who combine their resources – money, labor, skills, and/or property – to conduct business for profit, expecting to share both profits and losses.

- In a **Limited Partnership**, the general partners control business management and remain liable for the business obligations. The limited partners can reap the benefits of their investment and enjoy a limitation on liability, BUT cannot participate in the management or operation of the business.

- A **Limited Liability Partnership (LLP)** limits the personal liabilities of the business’ partners but requires legal filings and fees.
Limited Liability Company – LLC

• A Limited Liability Company (LLC) is a hybrid that provides the limited liability features of a corporation and the flexibility of a partnership.

• Relatively easy to form and manage. Owners are members, and the Operating Agreement may establish one or more managers.

• Can have a single member/manager.

• May elect pass-through or double taxation.

• Provides flexibility regarding raising capital and transferring interests in the LLC.
Non-Profit Corporations

- Status as a non-profit corporation provides certain benefits such as tax exemption and the ability to receive tax-deductible charitable donations.

- BUT, to qualify as a non-profit, the farm’s primary purpose must be educational, cultural, or charitable.

- The non-profit must be governed by individuals who do not have a financial stake in the business.

- Upon dissolution of the non-profit, its assets must be used in furtherance of its educational or charitable purposes.

- Must submit annual filings and petition the I.R.S. to obtain 501(c)(3) status.
Cooperatives

- Cooperatives must further members’ goals and meet their needs.

- Primary operational characteristics:
  - member ownership;
  - member control; and
  - proportional distribution of surplus based on a member’s use of the enterprise.

- Types of co-operatives:
  - producer cooperative - where the co-operative markets and distributes the members’ produce;
  - purchasing cooperative – where members purchase supplies or equipment together; and
  - worker co-operative – where employees own and govern the business together.

- Need seven or more members for an agricultural co-operative and need to follow the enabling statute if the organization calls itself a “co-operative.”
# The Entity Matrix for Farm Businesses
*(this is a job for you and your accountant)*

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<thead>
<tr>
<th>Things to Consider</th>
<th>C Corporation</th>
<th>S Corporation</th>
<th>Partnership</th>
<th>LLC</th>
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Is a Separate Entity Worth It?

• Helps shield personal assets from business liabilities.
• Facilitates raising capital.
• Facilitates bringing on partners.
• Rents as business expense increase personal equity.
• Facilitates transfer of business assets for succession and estate planning purposes.
Advisors you may need:

- Accountant
- Attorney(s)
- Financial planner
- Insurance agent
- Land use planner
- Conservation/land trust
- Lender
- Mediator / facilitator